

RULEMAKING NOTICE FORMNotice Number **2016-117**Rule Number **He-W 627.04, He-W 627.05, He-W 637.23, He-W 654.13, He-W 656.06**

1. Agency Name & Address: Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301	2. RSA Authority: RSA 167:3-c, I; RSA 167:4, I(c); RSA 167:80, IV(i) & V; RSA 167:91, V <hr/> 3. Federal Authority: _____ <hr/> 4. Type of Action: Adoption _____ Amendment _____ Repeal <u> X </u> Readoption _____ Readoption w/amendment <u> X </u>
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5. Short Title: **Financial Medical Assistance ,Post secondary Educational Programs and Income and Employment Disregard and Resources for FANF**

6. (a) Summary of what the rule says and of any proposed amendments:

He-W 627.04, He-W 627.05, and He-W 637.23 are scheduled to expire 9-20-16, and He-W 654.13 and He-W 656.06 are scheduled to expire 9-1-16, but these rules are subject to extension pursuant to RSA 541-A:14-a. The New Hampshire Department of Health and Human Services (Department) is proposing to:

- **Readopt with amendment He-W 627.04 and amend the part heading for He-W 627 and the He-W 627.04 section heading. He-W 627.04 describes the general requirements for Interim Disabled Parent (IDP) and Families with Older Children (FWOC) financial assistance relating to child support assignment to the Department. The Department is proposing to readopt this rule with changes to:**
 - **Remove the reference to TAP in the part heading for He-W 627, as the Transitional Assessment Planning (TAP) category of financial assistance was eliminated through the administrative rules process effective 9-20-08 (Document #9275), but the change to the part heading at that time was inadvertently overlooked;**
 - **Remove the unnecessary comma in the section heading for grammatical purposes; and**
 - **Add clarifying language to specify that this rule applies to financial child support as opposed to medical child support in (a), through the insertion of the word “financial” before “child support.” This specification is due to the reorganization of rules separating medical assistance and financial assistance, and the He-W 600s are being transitioned to describe financial assistance eligibility only.**
- **Repeal and hold He-W 627.05 in reserve. He-W 627.05 describes the general requirements for Interim Disabled Parent (IDP) and Families with Older Children (FWOC) categories of medical assistance. The Department is proposing to repeal this rule because implementation of the Affordable Care Act (ACA) has changed medical assistance categories, and eligibility for medical assistance is no longer aligned with the eligibility requirements for the FANF categories of cash assistance.**

- **Readopt with amendment He-W 637.23.** He-W 637.23 describes the assessments required to determine whether a New Hampshire Employment Program (NHEP) participant has a need for participation in a post secondary educational program, the criteria that the programs must meet, the verification required for a participant to maintain approval for participation in a post secondary educational program, the time limit for participation and exemptions from the time limit, and the criteria for determining a participant's need for additional post secondary educational programs. In addition to several non-substantive editorial changes, the Department is proposing to:
 - Add text at He-W 637.23(a)(6) to describe how NHEP staff will also assess the NHEP participant's prior enrollment and progress made in previous education and training experiences when determining the participant's current need for a post secondary educational program. Although the assessment of a participant's prior enrollment and progress made in previous education and training is already mandated in He-W 637.09(e) and (f)(2)-(6), the Department is proposing to insert this assessment criteria in this rule to clearly describe all assessments that are made;
 - Delete He-W 637.23(g) as it is a repetition of the requirements outlined in (f); and
 - Delete He-W 637.23(h) as it is a repetition of the exception to the time limit already provided to participants with a learning disability in (e)(2).
- **Readopt with amendment He-W 654.13.** He-W 654.13 describes the earned income disregard (EID) and employment expense disregard (EED) for FANF cash assistance applicants and recipients. The Department is proposing to readopt this rule with changes to remove the references to medical assistance because implementation of the ACA has changed medical assistance categories, and eligibility for medical assistance is no longer aligned with the eligibility requirements for the FANF categories of cash assistance.
- **Readopt with amendment He-W 656.06.** He-W 656.06 describes the resource limits used in determining eligibility for the FANF and adult categories of financial assistance as well as several different categories of medical assistance. The Department is proposing to readopt this rule with amendment to remove the references to resource limits for medical assistance.

6. (b) Brief description of the groups affected:

Applicants and recipients of FANF cash assistance are affected by these rules, except for He-W 656.06, where both FANF and adult category cash assistance applicants and recipients are affected.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 627.04	RSA 167:77-a, I(a); RSA 167:77-e, II
He-W 627.05	
He-W 637.23	RSA 167:85, IV(i); RSA 167:88; RSA 167:91, III-a; 45 CFR 260.20(b); 45 CFR 261.2(i); 45 CFR 261.30
He-W 654.13	RSA 167:4, I(a); RSA 167:80, IV(i) and V; RSA 167:82, VII(b); 45 CFR 233.20(a)(6), (a)(11)
He-W 656.06	RSA 167:81, II; 45 CFR 223.20(a)(3)(i)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, August 11, 2016**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, August 4, 2016 at 10:30 AM**

Place: **DHHS, Brown Bldg., Room 232, 129 Pleasant St., Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:122**, dated **07/01/16**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

45 CFR 260.20(b) mandates that promoting job preparation to end the dependence of needy parents on government benefits, as implemented by the Department at He-W 637.23, is one of the purposes of cash assistance to families, but there are no costs to the state associated with the proposed readoption of this rule.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not create a new program or responsibility, expand or modify an existing program or responsibility, or mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-W 627.04, effective 9-20-08 (Document #9275), and change the part heading for He-W 627, so that the part heading and He-W 627.04 are cited and read as follows:

CHAPTER He-W 600 FINANCIAL ASSISTANCE AND ELIGIBILITY FOR MEDICAL CARE

PART He-W 627 TECHNICAL REQUIREMENTS FOR IDP, ~~TAP~~, AND FWOC CATEGORIES OF FINANCIAL AND MEDICAL ASSISTANCE

He-W 627.04 General Requirements for IDP, and FWOC Financial Assistance.

(a) Applicants and recipients of IDP, as defined in He-W 601.05(i), and FWOC, as defined in He-W 601.04(e), categories of financial assistance shall not be required to assign their rights to financial child support to the department as a condition of eligibility.

(b) Applicants and recipients of IDP and FWOC financial assistance shall not be subject to child support sanctions described in RSA 167:82, V(a).

Repeal He-W 627.05, effective 9-20-08 (Document #9275), and hold said section in reserve, as follows:

He-W 627.05 ~~General Requirements for IDP and FWOC Categories of Medical Assistance.~~RESERVED

~~—(a) Requirements at 42 USC 1396k and 42 USC 608(a)(2)(B) and (3) shall apply to applicants and recipients of IDP, and FWOC.~~

Readopt with amendment He-W 637.23, effective 9-20-08 (Document #9275), cited and to read as follows:

CHAPTER He-W 600 FINANCIAL ASSISTANCE AND ELIGIBILITY FOR MEDICAL CARE

PART He-W 637 THE NEW HAMPSHIRE EMPLOYMENT PROGRAM (NHEP)

He-W 637.23 Post Secondary Education.

(a) When determining the NHEP participant's need for a post secondary educational program, as described in RSA 167:85 and 167:91, the NHEP representative shall perform an assessment of the following:

(1) The marketability of the participant's ~~marketability of~~ current skills, experience training and education;

(2) The participant's ability to achieve self-sufficiency without a post secondary educational program;

(3) The specific post secondary educational program's direct marketability ~~to-in the~~ local labor market;

(4) The participant's ability to successfully complete a post secondary educational program;
and

(5) The participant's ability to access support services needed to engage in a post secondary educational program, such as transportation and child care; ~~and, while engaged in a post secondary educational program.~~

(6) The participant's prior enrollment and progress made in previous education and training experiences.

(b) A post secondary educational programs shall meet the following criteria:

(1) Be consistent with the ~~individual's~~ participant's employability plan; and

(2) Have a reasonable expectation that the degree or certificate ~~shall~~ will result in ~~an individual~~ the participant obtaining employment.

(c) To ~~maintain approval~~ continue to be approved for the post secondary educational program, the participant shall ~~verify maintenance~~ provide verification of satisfactory progress in the program, as defined in He-W 637.01(j).

(d) The post secondary educational program shall be approved for a period of time not to exceed a lifetime limit of 12 months, whether or not consecutive months, ~~and~~ including in the sum total of 12 months any months spent in vocational educational training activities ~~pursuant as described in~~ He-W 637.22.

(e) The time limit identified in (d) above shall:

(1) Be extended for an additional 3 months ~~past beyond~~ the 12 month lifetime limit ~~of 12 months~~ when additional time is needed for the ~~individual~~ participant to complete and graduate from a program in which the ~~individual~~ participant is making satisfactory progress; and

(2) Not apply to a ~~participants individual~~ with a documented learning disability who provides verification of the ~~learning~~ disability and the need and length of time for extended participation in the post secondary educational program from either a:

a. A ~~S~~state certified education professional licensed to ~~certify~~ diagnose ~~for~~ learning disabilities; or

b. A licensed psychologist.

(f) When determining the NHEP participant's need for additional post-secondary educational programs when the participant already has at least one prior post secondary degree, the NHEP representative shall consider the following:

(1) ~~Assess w~~Whether significant labor market changes have ~~effected~~ affected the occupation associated with the participant's prior post secondary degree;

(2) ~~Determine if~~Whether, due to a documented disability, the participant no longer possesses the needed abilities to perform the job functions associated with the participant's prior post secondary degree;

(3) ~~Establish that if Whether~~ the NHEP participant's ~~previous-prior~~ post secondary educational program was interrupted due to a personal emergency, ~~and if the that~~ situation is now resolved; and

(4) ~~Consider the reasons for the previous failure, if Whether~~ the participant ~~has already been~~ was ~~previously~~ unsuccessful in ~~participating in completing~~ a post secondary educational program, ~~and the reasons for the prior failure.-~~

~~— (g) For individuals with previous post secondary degrees, when determining the NHEP participant's need for additional post secondary educational programs, the NHEP representative shall consider the following:~~

~~(1) Significant labor market changes effecting the occupation in which post secondary education has been previously received;~~

~~(2) The person no longer possesses the needed abilities to perform the job functions of the post secondary education received due to a documented disability;~~

~~(3) That the NHEP participant's previous post secondary educational program might have been interrupted due to a major personal emergency, which is now resolved; or~~

~~(4) If the participant had a previous unsuccessful attempt at a post secondary educational program and the reasons they have been unsuccessful.~~

~~— (h) The time limit identified in (f) and (g) above shall not apply to an individual with a documented learning disability who provides verification of the learning disability from a state certified education professional licensed to certify learning disabilities or a licensed psychologist. The verification shall specify the need and length for extended participation in the post secondary educational program.~~

Readopt with amendment He-W 654.13, effective 9-1-08 (Document #9252), cited and to read as follows:

CHAPTER He-W 600 FINANCIAL ASSISTANCE AND ELIGIBILITY

PART He-W 654 EVALUATION AND TREATMENT OF INCOME

He-W 654.13 Earned Income Disregards (EID) and Employment Expense Disregards (EED) for Financial Assistance to Needy Families (FANF).

(a) An earned income disregard (EID), as defined in He-W 601.03(1), -shall be subtracted from gross earned income for each applicant or recipient whose needs and income are considered when determining eligibility for Financial Assistance to Needy Families FANF financial ~~or categorically needy medical~~ assistance.

(b) For applicants who have not received FANF Financial Assistance to Needy Families financial ~~or categorically needy medical~~ assistance in any one of the previous 6 months, the ~~earned income disregard~~ EID shall be 20% of the individual's monthly gross earned income.

(c) The 20% earned income disregard shall be:

(1) Used to determine eligibility for applicants of ~~Financial Assistance to Needy Families~~FANF financial ~~and categorically needy medical~~ assistance in (b) above; and

(2) The first subtraction from the monthly gross earned income.

(d) If a financial assistance applicant is determined eligible after applying the 20% ~~disregard EID as described~~ in (c) above, then the benefit amount shall be determined using ~~the~~ 50% ~~earned income disregard EID~~ as described in (e) below.

(e) The 50% ~~earned income disregard EID~~ shall be used to determine:

(1) The eligibility and the benefit amount for current ~~Financial Assistance to Needy Families~~FANF financial ~~or categorically needy medical~~ assistance recipients;

(2) The eligibility and the benefit amount for applicants who have received ~~Financial Assistance to Needy Families~~FANF financial ~~or categorically needy medical~~ assistance in any one of the previous 6 months; and

(3) The benefit amount for applicants who are determined eligible as described in ~~He-W 654.13~~(d) above.

(f) For ~~Financial Assistance to Needy Families~~FANF ~~deeming and lump sum calculations~~, the employment expense disregard (~~EED~~), as defined in ~~He-W 601.03(o)45 CFR 233.20(a)(6)~~, shall be 20% of the individual's gross earned income ~~for deeming and lump sum calculations and medical assistance calculations other than medical assistance for low income children described in He-W 641.07 and pregnant women described in He-W 641.06.~~

Readopt with amendment He-W 656.06, effective 9-1-08 (Document #9252), cited and to read as follows:

CHAPTER He-W 600 FINANCIAL ASSISTANCE AND ELIGIBILITY

PART He-W 656 RESOURCES

He-W 656.06 Resource Limits.

(a) When determining eligibility for Financial Assistance to Needy Families (FANF) financial assistance ~~and categorically needy medical assistance, with the exception of severely disabled children as defined in He-W 507:~~

(1) Applicant households that have received financial ~~or categorically needy medical~~ assistance under ~~FANF~~Financial Assistance to Needy Families in any one of the previous 6 months shall be considered a recipient household in determining the resources limit to be used; and

(2) The resource limits shall be:

a. For applicant households, \$1,000; and

b. For recipient households, \$2,000.

~~(b) The resource limit for categorically needy medical assistance for severely disabled children shall be \$1,000, regardless of assistance group size.~~

~~(eb) The resource limit for adult category financial assistance and adult categorically needy medical assistance shall be \$1,500, with the exception of individuals eligible for medicaid for employed adults with disabilities pursuant to He-W 641.03.~~

~~(d) Except as described in (e) below, the resource limit for all categories of medically needy medical assistance shall be as follows, based on the number of individuals in the assistance group:~~

~~(1) For a single individual, \$2,500.00;~~

~~(2) For 2 individuals, \$4,000.00; and~~

~~(3) For 3 or more individuals, add an additional \$100.00 for each additional individual in the assistance group to the resource limit in (2) above.~~

~~(e) The resource limit for applicants for medical assistance long term care services shall be \$2,500 plus the value of coverage provided in a conforming long term care insurance policy, pursuant to RSA 167:4, IV(d) and 42 USC 1396p(b), as amended by Public Law 109-171.~~

APPENDIX

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 627.04	RSA 167:77-a, I(a); RSA 167:77-e, II
He-W 627.05	
He-W 637.23	RSA 167:85, IV(i); RSA 167:88; RSA 167:91, III-a; 45 CFR 260.20(b); 45 CFR 261.2(i); 45 CFR 261.30
He-W 654.13	RSA 167:4, I(a); RSA 167:80, IV(i) and V; RSA 167:82, VII(b); 45 CFR 233.20(a)(6), (a)(11)
He-W 656.06	RSA 167:81, II; 45 CFR 223.20(a)(3)(i)